

Notice of Allowability

Application No.

10/057,008

Examiner

Melvin H. Pollack

Applicant(s)

LITWIN, LOUIS ROBERT

Art Unit

2145

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the amendment submitted 8/24/05.
2. ☒ The allowed claim(s) is/are 1-12, 14-32 and 34-45.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413), Paper No./Mail Date _____
7. ☐ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☒ Other see attached office action.

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SPE AUG 21 45

DETAILED ACTION

Allowable Subject Matter

1. Claims 1-12, 14-32, and 34-45 are allowed.
2. The following is an examiner's statement of reasons for allowance: the examiner agrees with the applicant's remarks regarding reasons for allowance for newly drawn claims.
3. The invention is drawn to the calculation and handling of a cost of service (specification, P. 10, lines 10-25). While the cost of service is based on levels of congestion, it is a separate and distinct measure from quality of service and load balancing (remarks, P. 14, lines 18-22) and further from "peak usage criteria" (remarks, P. 17, lines 9-10).
4. The invention is drawn to the determination and transmission of cost of service information, determination of a cost to download content, and comparison to a cost of service threshold determined by a user. Specifically, it is determined that the download can occur at any time that the cost of service is less than the threshold (remarks, P. 16, lines 1-3), even if the user is not present (remarks, P. 14, lines 9-11). If the cost of service rises above the threshold, the download is stopped completely (remarks, P. 17, line 6), and is paused until such time as the cost of service falls below the threshold. In other words, the inventive entity is the ability to pause and resume the downloading process.
5. In the art regarding cost of service and quality of service thresholds, any rise in congestion following the start of a content download results in the continued downloading of the system or in the immediate end of the download process such that the user must manually restart the download procedure. Art that teaches the pausing of content downloading is drawn to utilizing a pause command (from the sender or receiver) in order to handle problems in

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transmission such as collisions, overflow buffers, lack of channels, and the like. Thus, said art fails to teach pausing and resumption related to cost of service.

6. For claims 1 and 25, the examiner has determined that the pausing and resumption of downloading related to cost of service as compared to user-defined thresholds is novel and non-obvious. Therefore, the claims are allowable.

7. Claims 2-12, 14-24, 26-32, and 34-45 are dependent on allowable claims, and are therefore also allowable for the reasons above.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. They are drawn towards background regarding cost of service and quality of service issues, and/or to pausing of downloading due to error-handling processes.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melvin H. Pollack whose telephone number is (571) 272-3887. The examiner can normally be reached on 8:00-4:30 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jason Cardone can be reached on (571) 272-3933. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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09 November 2005



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